

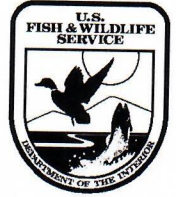


In Reply Refer To:  
18-CPA-0045

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

New Jersey Field Office  
4 East Jimmie Leeds Road, Unit 4  
Galloway, New Jersey 08205  
Tel: 609/646 9310  
<http://www.fws.gov/northeast/njfieldoffice>



Peter R. Blum, Chief  
Planning Division, Philadelphia District  
U.S. Army Corps of Engineers  
Wanamaker Building  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390  
ATTN: Ms. Beth Brandreth

NOV 22 2017

Dear Mr. Blum:

The U.S. Fish and Wildlife Service (Service) received your November 9, 2017 request for streamlined (Tier 2) formal consultation regarding U.S. Army Corps of Engineers, Philadelphia District (Corps) proposed Federal storm damage reduction in the City of Margate within the approved Absecon Island, Atlantic County, New Jersey project area (Atlantic City, Ventnor City, Margate, and Longport). This response serves as Tier 2 streamlined consultation pursuant to the Service's December 2005 Programmatic (Tier 1) Biological Opinion on the Effects of Federal Beach Nourishment, Re-nourishment, Stabilization, and Restoration Activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the Federally Listed (threatened) Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus pumilus*) (PBO). This Tier 2 (streamlined) consultation covers only this proposed extension of five outfall pipes into the Atlantic Ocean.

### AUTHORITY

The following comments are provided under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*), the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA), and the Migratory Bird Treaty Act (40 Stat. 755 as amended; 16 U.S.C. 703-712). These comments are consistent with the intent of the Service's Mitigation Policy (Federal Register, Vol. 46, No. 15, Jan. 23, 1981). The Service's Mitigation Policy and the Section 404(b)(1) Guidelines emphasize that avoidance and minimization precede compensation, which is to be considered solely for unavoidable adverse impacts on fish and wildlife resources and their supporting ecosystems.

## **CONSULTATION HISTORY**

Correspondence was exchanged among the Service, Corps, and the New Jersey Department of Environmental Protection's Division of Fish and Wildlife – Endangered and Nongame Species Program regarding the proposed outfall pipe extensions in the City of Margate. A chronology of key correspondences is provided below.

November 9, 2017     The Corps requested the Tier 2 consultation to conduct the subject outfall pipe extensions with a proposed completion date of February 2019. Because the work will occur during the active nesting season of piping plovers following a beach re-nourishment to be completed by March 2018, the Corps will require a monitor to be present in the project area.

## **PROJECT DESCRIPTION**

The project would entail extending five stormwater outfalls into the ocean within the City of Margate. The outfalls consist of ductile iron pipes supported by timber piles with wooden cribbing. The Corps anticipated completing the project by February 2019.

Piping plovers have not historically nested within the project area. Because of an ongoing beach re-nourishment to be completed by March 2018, the Corps will require qualified piping plover monitors to be present from March 15, 2018 to August 15, 2018 to monitor piping plovers and other State-listed shorebirds. No seabeach amaranth plants were documented occurring in the City of Margate.

## **ADHERENCE TO MEASURES TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES**

Relevant conservation measures proposed by the Corps for protection of federally listed species and reasonable and prudent measures imposed by the Service to minimize take of federally listed species are specified within the Service's December 2005 Tier 1 PBO and are applicable to all Tier 2 projects carried out under the Corps' program.

The Corps will retain qualified avian biologists from March 15, 2018 to August 15, 2018 to monitor for any nesting attempts by piping plovers following completion of the beach re-nourishment activity. If piping plover territorial or nesting activity is taking place within or adjacent to the proposed project area, work shall cease, and the Corps shall notify the Service immediately for the purpose of developing an interim protection plan.

The federally listed (threatened) plant seabeach amaranth was never documented as occurring on the City of Margate beaches.

A final rule to list the red knot as threatened under the ESA was published on December 11, 2014, with an effective date of January 12, 2015. Small numbers of red knots may occur in New Jersey year-round, while large numbers of birds rely on Atlantic Coast



stopover habitats during the fall (late-July through October) migration period. The Service concurs with the Corps that the project is not likely to adversely affect the red knot because available records indicate negligible use of the project area by red knots.

## **STATUS OF THE SPECIES**

Relevant biological and ecological information for the piping plover and seabeach amaranth was provided to the Corps in the Service's December 2005 Tier 1 PBO. That information remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

## **ENVIRONMENTAL BASELINE**

The environmental baseline for the Corps' overall program for Federal beach nourishment, re-nourishment, stabilization, drainage, and restoration activities along the Atlantic Coast of New Jersey within the Philadelphia District was established and fully described within the Service's December 2005 Tier 1 PBO. Updated information regarding the status of the piping plover and seabeach amaranth within or near the project area since issuance of the December 2005 Tier 1 PBO has become available and is presented in this letter.

## **EFFECTS OF THE ACTION**

Following review of the information provided by the Corps regarding the subject outfall extension project, the Service has determined that the potential effects of the project are consistent with those addressed in the December 2005 Tier 1 PBO and are hereby incorporated by reference. No piping plovers have historically nested in the project area. Seabeach amaranth is not known to have ever occurred within the project area.

Should the re-nourishment create piping plover nesting habitat that is occupied by plovers prior to completion of the outfall extension project, work must cease temporarily and the Service must be notified immediately to provide further guidance. Should seabeach amaranth plants become established during the 2018 growing season, the Service will coordinate with the Corps to prepare a protection plan.

## **CONCLUSION**

Actions and effects associated with the project are consistent with those identified and discussed within the Service's December 2005 Tier 1 PBO. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species within the project area, and the effects of the action, it is the Service's Biological Opinion that the project as proposed is not likely to jeopardize the continued existence of the piping plover or seabeach amaranth. No Critical Habitat has been designated for these species within the project area; therefore, no Critical Habitat will be affected.



## **INCIDENTAL TAKE STATEMENT**

Section 9 of the ESA and the Federal regulation pursuant to Section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of carrying out an otherwise lawful activity.

Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to, and not intended as part of the agency action is not considered a prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement. Sections 7(b)(4) and 7(o)(2) of the ESA do not apply to the incidental take of federally listed plants species; therefore, no incidental take statement, and subsequently no reasonable and prudent measures nor terms and conditions were provided for seabeach amaranth within the Service's December 2005 Tier 1 PBO or are provided within this Tier 2 Biological Opinion.

## **REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS**

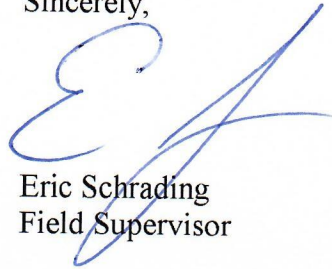
To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the Service's December 2005 Tier 1 PBO, to minimize the impact of anticipated incidental take of piping plovers. The Service has determined that no new reasonable and prudent measures, beyond those specified in the December 2005 Tier 1 PBO, are needed to minimize the impact of incidental take anticipated for the subject outfall extension project.

## **REINITIATION - CLOSING STATEMENT**

This concludes Tier 2 formal consultation on the effects of the proposed outfall extension project in the City of Margate. As provided in 50 CFR Section 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or Critical Habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or Critical Habitat that was not considered in this opinion; or, (4) a new species is listed or Critical Habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending re-initiation.

Please contact Carlo Popolizio at (609) 382-5271 if you have any questions regarding these comments or require further assistance regarding threatened or endangered species.

Sincerely,

A handwritten signature in blue ink, appearing to be 'ES', with a long horizontal stroke extending to the right.

Eric Schradling  
Field Supervisor





DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
100 PENN SQUARE EAST, 7<sup>th</sup> FLOOR WANAMAKER BUILDING  
PHILADELPHIA, PENNSYLVANIA 19107-3390

NOV 09 2017

Environmental Resources Branch

Mr. Eric Schrading, Supervisor  
U.S. Fish and Wildlife Service  
Atlantic Professional Park  
4 E. Jimmie Leeds Road  
Galloway, New Jersey 08205

Dear Mr. Schrading:

In accordance with procedures outlined in the "Biological Opinion on the Effects of Federal Beach Nourishment Activities Along the Atlantic Coast of New Jersey Within the U.S. Army Corps of Engineers (USACE), Philadelphia District on the Piping Plover and Seabeach Amaranth", prepared by your office in December 2005, the Philadelphia District is writing to request re-initiation of streamlined (Tier 2) formal consultation under Section 7 of the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*), with regard to the Federal storm damage reduction project in Atlantic City, Ventnor City, Margate and Longport, New Jersey (Absecon Island project) and the concerns over potential direct, indirect and cumulative impacts to the federally threatened piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*). We are also requesting informal consultation related to potential impacts to the rufa red knot (*Calidris canutus rufa*). The purpose of this re-initiation is to update the description of the work being performed in Margate and to extend the construction timeline as a result of this work.

Previous Tier 2 coordination for this project was initiated with a letter to your office on August 18, 2016 and a reply from you on August 29, 2016. This coordination outlined the sand placement to take place in the project area and anticipated a construction end date of March 2018.

Currently, the City of Margate's storm water is delivered from street ends right onto the beach. When ponding would occur on the upper beach, ditches were dug in the beach (by the City) to drain the ponded water into the surf. The recent installation of the dunes in the project area by USACE is now keeping storm water ponded behind the dunes and prevents the previous practice of using ditches to drain the water. It was originally believed that the water would percolate through the sand to drain in a reasonable amount of time. Following the construction of the dunes in the project area, several storms dropped a significant amount of rain in the project area. Due to the amount of rain and the conditions on the beach, water did not drain in a timely manner and it was determined that a more proactive approach was needed to deal with the storm water in order to address public health and safety.

The USACE, Philadelphia District, is proposing to extend five storm water outfalls into the ocean from the existing Margate storm water management system, which currently ends at their bulkheads (see enclosed figure). The outfalls consist of ductile iron pipes supported on timber piles with wooden cribbing to hold the pipes in place. The system will gather the water at the



bulkheads and transport the water out to the ocean through the outfalls. The plan for construction of the outfalls is to stock pile material (sand) to push out onto the beach and build in the dry. Depending on when the contractor will be able to get the material needed to begin work on the outfalls, they may just build as much in the dry as possible now and finish extending them during the next re-nourishment. That decision has not yet been made. In any event the last pile bent will be driven at Mean Low Water. Due to the time needed to obtain the construction material and install the outfalls, it is now anticipated that construction in this area will be completed by February 2019. Beachfill activities are still expected to be completed by March 2018. The need to extend outfall structures on project beaches was identified as an action associated with the storm damage reduction projects in the 2005 Programmatic Biological Opinion (PBO) and therefore, potential impacts associated with the outfalls were incorporated into the conservation measures developed at that time. Therefore, this change to the project does not fall outside of the scope of the PBO.

Piping plovers have not historically nested within the project areas and were not present during the 2017 nesting season. Due to the recent addition of sand within the project area however, it is possible that suitable nesting habitat will be present in the project area during the 2018 nesting season. For this reason, USACE will require qualified plover monitors be present from March 15, 2018 – August 15, 2018 to monitor the construction area for piping plovers and other sensitive beach nesting birds.

Seabeach amaranth is a small beach dwelling plant generally found on the fore dunes and seaward edges of beaches above the high tide line. Information provided by your office indicated that no seabeach amaranth plants were found within the project area in 2017. A seabeach amaranth protective zone does exist at the Seaview Harbor Marina in the Borough of Longport but this does not fall within the fill area for the project.

A final rule to list the *rufa* subspecies of red knot as threatened under the ESA was published December 11, 2014, and became effective January 12, 2015. Red knots are also federally protected under the Migratory Bird Treaty Act and are listed as endangered by the State of New Jersey. Red knots typically occur in New Jersey during their annual spring and fall migration. Small numbers of red knots may occur year-round in New Jersey, whereas large numbers rely on New Jersey's coastal stopover habitats during the spring (mid-May through early June) and fall (late-July through November) migration periods (USFWS 2015). The project area has the potential to serve as fall migratory stopover habitat for the red knot. Your letter of August 29, 2016 states that there is negligible use of the project area by red knots based on available records.

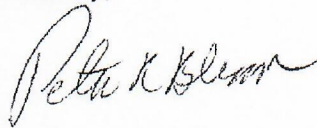
To insure that the upcoming construction activities are "not likely to adversely affect" listed species, USACE has taken several preliminary steps to avoid directly impacting the piping plover and seabeach amaranth. No construction activities will take place within active nesting zones or buffer areas, or areas where seabeach amaranth has been found. Since work will now be occurring during the 2018 plover season and the sand recently placed may have created suitable plover nesting habitat, plover monitors will be required during the construction of the outfalls in Margate.

Based on the above information, and the fact that USACE will follow the reasonable and prudent measures and terms and conditions outlined in the Biological Opinion to protect the species in question, it is concluded that the current plan to extend 5 storm water outfalls in Margate is not likely to directly impact the piping plover, red knot or seabeach amaranth. The potential indirect, secondary, and cumulative impacts to plovers, have been fully covered in the Biological Opinion and are "not likely to adversely affect" the species. Therefore we believe that the consultation for this nourishment cycle (including the outfall extensions) can be concluded through informal consultation.

At this time, we are requesting a written response indicating your concurrence with our proposed course of action with regard to direct and indirect impacts to these threatened species and the proposed USACE construction activities. This response will serve to conclude the Section 7 Consultation Process for this phase of the Absecon Island Project. We appreciate your attention to this matter.

If you have any questions or require additional information, please contact Ms. Beth Brandreth of the Environmental Resources Branch at (215) 656-6558 or by email [Mary.E.Brandreth@usace.army.mil](mailto:Mary.E.Brandreth@usace.army.mil).

Sincerely,



Peter R. Blum, P.E.  
Chief, Planning Division

Enclosure

cc:  
Christina Davis, NJDEP  
[Christine.Davis@dep.nj.gov](mailto:Christine.Davis@dep.nj.gov)



FIGURE 1: CONCEPT OUTFALL GROUPINGS

